

#### Remarks

Claims 1-11 were pending in the application. Claims 1-11 were rejected. No claims were merely objected to and no claims were allowed. By the foregoing amendment, no claims are canceled, claim 1 is amended, and claims 12-14 are added. No new matter is presented.

#### Advisory Action

The Advisory Action dated November 19, 2009 asserted the foregoing amendments to claims 1 and 12 and paragraph 0018 required further consideration and search.

#### Drawings

The drawings were objected to for asserted new matter discussed in the “Response to Amendment” section below.

#### Specification

The specification was objected to for a lack of antecedent basis for the claim 8 identification of “for rotation”. This is discussed in detail in the “Response to Amendment” section below.

#### Claim Rejections-35 U.S.C. 112

Claim 8 was rejected under 35 U.S.C. 112(1) as failing to comply with the written description requirement. Applicants respectfully traverse the rejection.

The Office noted the “for rotation” language noted above. The foregoing amendment adds the specific language. Thus, the rejection collapses into the new matter assertions discussed in the “Response to Amendment” section below.

New claim 12 uses the wording as originally disclosed on page 4, line 109 “the bearings 5 permit rolling up and unrolling of the night blind 1 from its roll 3” to recast this feature. Claims 13 and 14 are supported by claims 9 and 10.

Claim 8 was rejected under 35 U.S.C. 112(1) as failing to comply with the enablement requirement. Applicants respectfully traverse the rejection.

First, the Office has failed to make any appropriate background findings to support such a

rejection. For example, the Office has not found that the level of skill in the art is so low that there is a lack of enablement. Second, the Office has not established that such person would be unable to practice the invention. The placing of bearings to rotate a member about an axis is clearly not an unusual skill. Third, the discussion below regarding the “Response to Amendment” section is also relevant.

Claim 8 was rejected under 35 U.S.C. 112(2). Applicants respectfully traverse the rejection.

The limitation “and longitudinally slidable” in claim 8 was objected to. The Office asserted that “It is unclear what object the Applicant intends to modify...” 8/14/2009 Office action, page 3, section 8. However, it is clear that it modifies the roll. Clearly, grammatically the roll is the subject of the clause in question. Nevertheless, the claim is amended with a redundant recitation.

#### Claim Rejections-35 U.S.C. 102

Claims 1-3 and 8-11 were rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (JP2001123766). Applicants respectfully traverse the rejection.

As noted above, claim 1 adds the feature that the roll 3 loosely rests on, or is supported by, bearings 5 in a groove-like recess of the refrigerated shelf cabinet portion 2 so as to permit a sliding motion of the roll 3 along the longitudinal axis.

The amendments to independent claim 1 are supported by page 3, lines 100 and 102, page 4, lines 103 to 107 and page 4, lines 113 to 115.

The Office asserted that “at least one of the rolling night blinds comprises at least one loose bearing (8) for rotation about a longitudinal axis (7), such that the at least one rolling night blind can be supported so as to be slidable... along a longitudinal axis of a blind carrier shaft...” 8/14/2009 Office action, page 5, lines 2-7. There are several clear deficiencies.

First, reference to numeral 8 is well beyond the level of detail in the English language abstract of Yamamoto. There is clearly no basis for the assertions regarding element 8. If this rejection is to be maintained, the Office must provide a full translation and appropriate analysis. At best (worst) element 8 appears to be one of several intermediate rollers. No relationship to bearings appears clear.

Second, element 7 identified by the Office is merely the “bend roller” as identified in the robot translation. Elements 8 (there being two and the Office having not distinguished) are each a “rotary roller” and 9 a “turn roller”. The roll is found at the “return spring in winding-rollers 11”.

Third, the Office has failed to identify any “recess” which is specified in claim 8 and is now specified in claim 1 as the groove-like recess.

The roll 11 (or 7) of Yamamoto does not rest on bearings in a groove-like recess of the refrigerated shelf cabinet portion. The rollers 8 that have been asserted as bearings do not support the roll 11 (or 7) and they are not arranged in a groove-like recess of the refrigerated shelf cabinet portion.

Furthermore, no relationship to the claimed slidable movement is found. At best (worst?) element 8 merely allows the blind to be rolled and unrolled over element 8 while not permitting sliding in the direction of its carrier shaft. This further appears to be confirmed by the apparent relationship between Yamamoto elements 18 and the elements (rails?) 19.

Claim 8 yet further distinguishes this by identifying the bearing as supporting the roll on which the blind rolls up and from which the blind is rolled out. The Office merely hypothesized slidability “since adequate clearance is shown on the end of the roll in FIG. 4 which would allow for sliding adjustability when the roll is slacked.” 8/14/2009 Office action, page 5, lines 4-6. This is mere speculation. What is meant by “when the roll is stacked”?

Thus, the feature of claim 1 that “at least one of the rolling night blinds comprises at least one loose bearing such that the at least one rolling night blind can be supported so as to be slidable in a direction along a longitudinal axis of a blind carrier shaft” is not shown by Yamamoto. On the one hand, the rollers 8 are not loose bearings but rather rollers arranged at a fixed position. On the other hand, they do not allow a slidable motion in a direction along a longitudinal axis of the shaft of 11 (let alone 7; see below).

Finally, Yamamoto does not show the feature of claim 1 that “the at least one rolling night blind is held in the rolled-up state in the inoperative position thereof”, because the sectional view of Fig. 2 clearly shows that a quite substantial part of the blind 6 is not rolled-up but guided over the rollers 7, 8, 9, 8 and 11.

Claims 1-3 and 8-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto. Applicants respectfully traverse the rejection.

At page 5 of the Office action, factual inquiries set forth in *Graham v. John Deere* were listed. However, no findings were made relative to such inquiries.

The Office hypothesized clearance at either end of the roll from window blinds but then asserted: “It is thereby obvious that such a clearance demonstrates a design that would provide for slidable adjustability in a direction along the longitudinal axis when the blind is sufficiently slacked.” 8/14/2009 Office action, page 7, lines 5-8. What does the Office mean by “when the blind is sufficiently slacked”? How does this relate to the bearings?

Claims 4-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto in view of Eming (US5171076). Applicants respectfully traverse the rejection.

Eming was cited for the perforations/holes. The Office’s assertions regarding Eming do not cure the deficiencies of the underlying Yamamoto rejections.

#### Response to Amendment

The Response to Amendment section articulated the new matter rejections mentioned above.

First, the Office asserted “The original disclosure makes no mention of the term ‘open front cabinet’ nor is the disclosed cabinet described as being ‘open front’.” 8/14/2009 Office action, page 8, lines 12&13. This rejection highlights the failure of the Office to make basic background findings (e.g., of skill in the art) which infect all the rejections above and below. Clearly, the open front cabinet as a term of art is the cabinet shown and described. The specification mentions the cabinet, the opening, the front, and the blind therealong. This wording alone, supports the open front nature and one of ordinary skill in the art would so appreciate. The two attached articles clearly evidence the term “open front” as a term of art describing cabinets of this general type.

The Office further asserted that the illustration of the opening 14 was new matter. Again, the specification mentions the blind as positioned to cover the opening (e.g., page 1, lines 22&23). FIG. 1 as-filed clearly shows this opening and shows the blind in the claimed positional relationship. Adding the reference numeral 14 is not new matter.

The Office further asserted that identifying the longitudinal axis “constitutes new matter since the original disclosure did not set for [*sic*] the [*sic*] this definition or orientation of the axis. The axis could have been defined and illustrated in numerous different directions.” 8/14/2009 Office action, page 9, lines 2-3. Again, this is clearly unreasonable in the extreme. The Office did not, for example, identify any of its hypothesized numerous different directions. The as-filed application clearly recites, *inter alia*, “slidability along the longitudinal axis of the roller blind shaft”. What possible interpretation can the Office advance? Adding the numeral 20 is not new matter.

The Office then asserted that “The structure of the means for connecting (30) feature now includes two additional dotted lines that were not previously present in the drawings nor were they described or identified in the original disclosure.” 8/14/2009 Office action, page 9, lines 6-9. The means are schematically illustrated at a level of detail consistent with the as-filed written description. For example, the specification identifies hook and loop fastener or zip fastener at the adjoining side portions of the blinds (page 3, lines 90-94). This is the level of detail illustrated as would easily be understood by one of ordinary skill in the art. The foregoing amendment to paragraph 0023 confirms this schematic showing.

Similarly, the Office asserted the perforations to be new matter “since the disclosure did not provide for this particular location or size of the illustrated portions, as it is currently illustrated.” 8/14/2009 Office action, page 9, lines 15-17. Again, the illustration is at a schematic level of detail consistent with the written description in the as-filed specification as would be interpreted by one of ordinary skill in the art. Applicants are not attempting to introduce some unique detailed pattern. The foregoing amendment to paragraph 0024 confirms this schematic showing.

Similarly, the illustration of upper and lower portions was asserted as being “new matter since the disclosure did not provide for this particular location or size of the illustrated portions, as it currently illustrated.” 8/14/2009 Office action, page 9, lines 19-21. Again, this is merely a schematic illustration and would be understood by one of ordinary skill in the art as such. This is not, for example, a situation where Applicants have added claims to the very specific proportion which is not supported by the as-filed specification. The foregoing amendment to paragraph 0025 confirms this schematic showing.

Accordingly, Applicants submit that claims 1-10 and 12-14 are in condition for allowance. Reconsideration and further examination are requested. Please charge any fees or deficiency or credit any overpayment to our Deposit Account of record.

Respectfully submitted,

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Enclosures:

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## H-E-B OPENS NEW SPRING MARKET STORE NOVEMBER 11, 2009

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HOUSTON - H-E-B Spring Market will open its doors on Wednesday, November 11, 2009, offering customers a first-class shopping experience that is both fresh and convenient. Located at 2121 F.M. 2920, Spring, TX 77388, the new store will combine the best of H-E-B food and drug stores in an 85,000-sq. ft. store. With endless selection, fresh offerings and leading departments, the new H-E-B Spring Market will bring area families unsurpassed freshness, quality, variety and service while keeping H-E-B's promise to offer everyday low prices.

"As the needs of our customer base change and evolve, H-E-B must do the same," stated Cyndy Garza-Roberts, director of public affairs for H-E-B's Houston Region. "We listened to what our customers wanted while building this store, and created an ideal destination for grocery shopping. Everything about the store, from its design to its fresh offerings, was specifically tailored to meet the needs and desires of this community."

H-E-B Spring Market shoppers will enjoy the following departments, features and offerings in the new store:

- Full-service Meat Market offering USOA Prime, Natural, and Organic meats
- Full-service Seafood Department with seven-day a week fresh fish deliveries from around the world with a wide variety of wild and local species
- Unparalleled Produce Department showcasing more than 900 varieties of the best fruits and vegetables from around the world, including a vast selection of organic produce and fresh cut fruits and melons
- Full-service Deli featuring Boar's Head premium meats and cheeses sliced just for you
- Cheese Shop with more than 300 varieties of specialty and imported cheese from around the world. Enjoy our handmade mozzarella, made fresh daily!
- Bakery complete with a full assortment of organic and homemade artisan breads baked on-site daily as well as fresh corn and flour tortillas from our in-store Tortilleria
- Enhanced organic offerings with thousands of organic and natural products including a large assortment of Central Market products and Gluten-free items
- Hot and Ready Rotisserie Chicken, cooked fresh in-store and available in 6 flavors
- Custom made party trays for all holiday and entertaining needs
- Cooking Connection complete with live demonstrations and cooking classes with our dedicated Cooking Coaches and Showtime partners offering daily sampling of great recipes for your family

Non food highlights will include a floral department; a pharmacy with a convenient drive-up window; a wide selection of general merchandise and seasonal items; a Fuel Station; business center services such as bill pay and Western Union; and an expanded selection of cosmetics.

Committed to the environment and green business practices, H-E-B designed the new store with numerous innovative and sustainable elements, including highly reflective roofing, which keeps from heating up the building and therefore saves energy to cool the building interior; water efficiency features and equipment inside the store; and energy efficient features including computer automated air conditioning and heating, administrative area light fixtures, and energy-saving "Night Blind" roll down thermal shades on open front refrigerated display cases when the store is closed, reducing the energy use of those cases by four percent.

Twenty-one year retail grocery veteran Patrick Gural will be the unit director of the store. Other key managers are Rick Copeland, center store leader, and Jennifer Sims, operations leader.

"I am extremely excited to have this opportunity to lead the Spring Market operation, which will feature the very best of what H-E-B has to offer," said Gural. "When we open for business, we will inspire and impress every customer from the time they enter our store until their family meal is complete."

The store will be staffed with 320 knowledgeable employees that will make the shopping experience an outstanding one for customers. Produce experts will provide samples of fresh fruits and vegetables while seafood experts, artisan cake decorators and certified, trained meat specialists will be on-hand to assist customers.

### About H-E-B

H-E-B was founded in Kerrville, Texas in 1905 with a single grocery store. For more than 100 years, H-E-B has been an innovative retailer known for low prices, fresh food, quality products and convenient services. The company has grown to more than 300 stores in Texas and Northern Mexico with more than 70,000 employees. It conducts a wide range of efforts geared toward helping the community and the environment. H-E-B is one of the largest food chains in the United States, with annual sales more than \$15 billion, and is the largest privately held company

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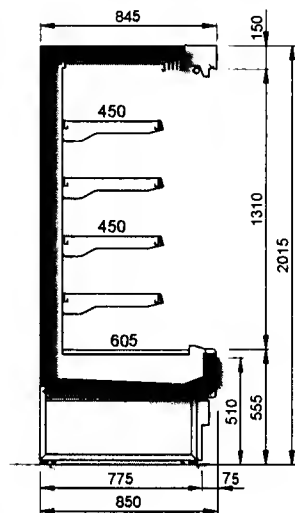
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- C: Dairy, fruit, vegetables, deli, soft drinks, beer, snack foods, etc.
- C1: Meat, poultry

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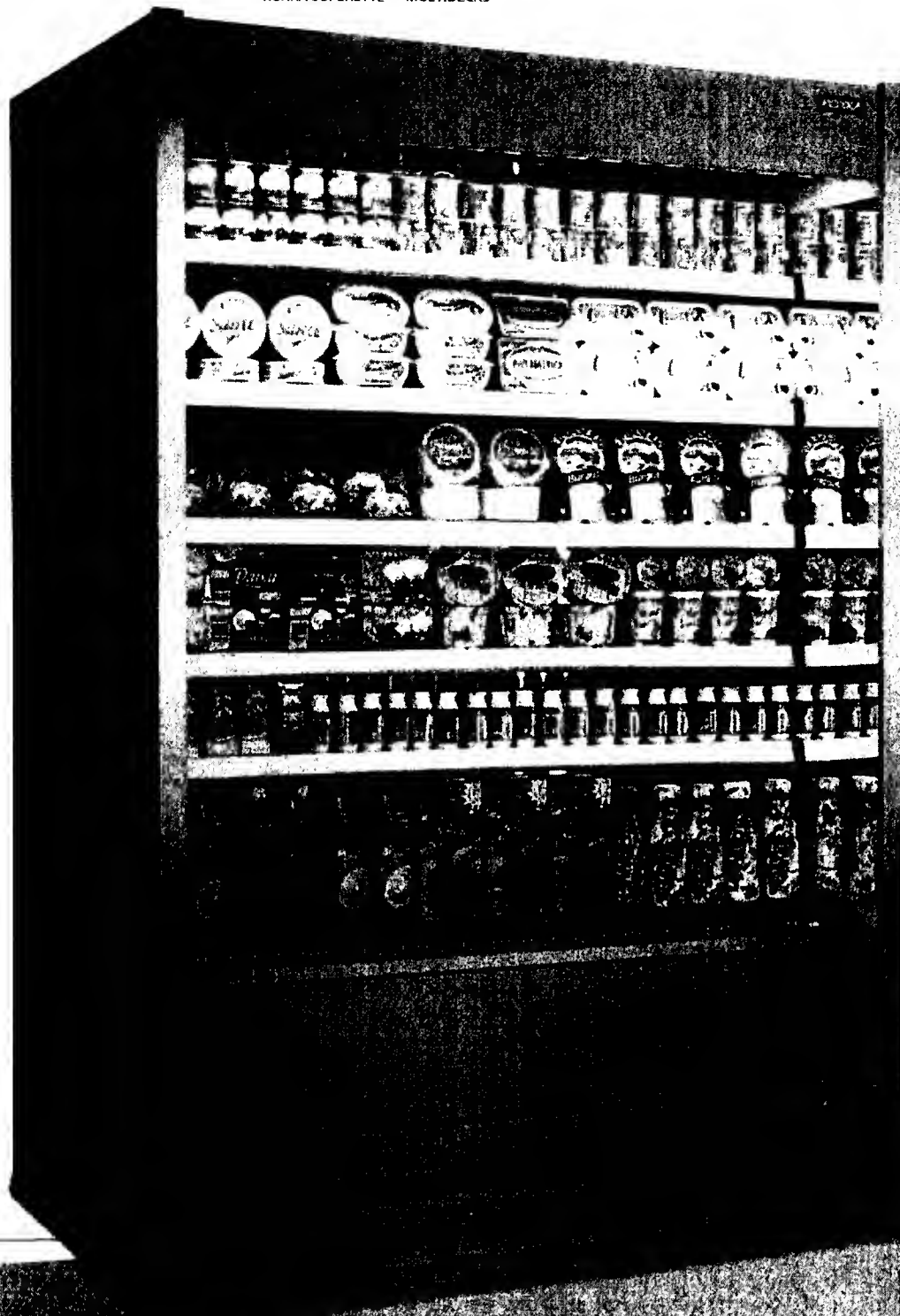
- Manual night blind
- 4-tier adjustable shelving (height and angle)
- 40mm ticket strip
- Electronic TEK controller
- Solid end panel with mirrored interior
- Canopy lighting
- Digital thermometer
- Removable condensing unit for easy cleaning
- Self-evaporating drainage system
- Bumper
- Adjustable feet

## OPTIONS AND ACCESSORIES:

- Transparent side panels with optional lighting
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- Side/double lighting kit
- Multiplexing kit
- Ticket strip kit
- Auxiliary evaporator kit
- 35mm Perspex shelf riser
- Fixed Perspex divider
- Mirror kit
- Display rack kit (C19 models only)
- Adaptable to 115V/60Hz
- Wide choice of colours
- Bumpers available in 6 colours
- Adhesive branding
- Canopy branding

## MULTIDECK: C

	C-10	C-14	C-19	C-26	C1-10	C1-14	C1-19	C1-26
Internal width (mm)	980	1330	1880	2580	980	1330	1880	2580
Internal depth (mm)	558	775	1116	1550	558	775	1116	1550
Internal height (mm)	1.68	2.28	3.22	4.42	1.68	2.28	3.22	4.42
Internal width (mm)	2.21	2.93	4.11	5.59	2.21	2.93	4.11	5.59
Internal depth (mm)	2.17	3.01	4.33	6.01	2.17	3.01	4.33	6.01
Internal height (mm)	1.29	1.80	2.59	3.59	1.29	1.80	2.59	3.59
Internal width (mm)	4	4	4(x2)	4(x2)	4	4	4(x2)	4(x2)
Internal depth (mm)	450x900	450x1250	450x900	450x1250	450x900	450x1250	450x900	450x1250
Internal height (mm)	81	112	81	112	81	112	81	112
Internal width (mm)	27.5	32.4	38.7	51.4	27	31.9	40.9	52
Internal depth (mm)	8.2	9.7	11.7	17	8.2	9.9	14.7	17.5
Internal height (mm)	60	60	63	63	61	61	63	63
Internal width (mm)	3	3	3	3	3	3	3	3
Internal depth (mm)	M2	M2	M2	M2	M1	M1	M1	M1
Internal height (mm)	404A	404A	404A	404A	404A	404A	404A	404A
Internal width (mm)	1150	1300	2000	2x1300	1250	1450	2x1250	2x1500
Internal depth (mm)	Air cooled	Air cooled	Air cooled	Air cooled	Air cooled	Air cooled	Air cooled	Air cooled
Internal height (mm)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes



**Raising the standard  
in refrigeration design**